TOWN OF MILLVILLE BOARD OF ADJUSTMENT HEARING MINUTES December 14, 2015

1. CALL TO ORDER & PLEDGE: Commissioner Andy Lyons called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. IN ATTENDENCE: Commissioners' Andy Lyons, Dana Ryer, and Valerie Faden. Attorney Vince Robertson of Griffin and Robertson P.A., Town Solicitor Seth Thompson, Town Manager Debbie Botchie, Code & Building Administrator Eric Evans, and Town Executive Assistant Matt Amerling.

4. DISCUSSION AND DECISION ON THE FOLLOWING:

A. Appointment of Board of Adjustment (BOA) Chairperson and Secretary

Commissioner Valerie Faden motioned to appoint Andy Lyons as Chairperson. Commissioner Dana Ryer seconded the motion. Mr. Lyons abstained. Motion carried 2-0-1.

Commissioner Dana Ryer motioned to appoint Valerie Faden as Secretary. Mr. Lyons seconded the motion. Ms. Faden abstained. Motion carried 2-0-1.

B. Discussion and possible vote on approval of BOA Hearing Rules

Mr. Vince Robertson, Esq., stated, for the benefit of the Board, there are rules that have been placed and these are just amendments to the existing rules. Town Solicitor Seth Thompson stated that is correct and the former Board's rules are still in effect but this is recertifying those rules since the Town has new members on the Board. Chairman Lyons asked if the BOA should read through the rules. Mr. Robertson stated it would not be necessary to read through each rule if the BOA members already did so. Mr. Robertson stated the main changes are fairly minimal. for example, in rule number six (6), it states: "The following rules shall govern hearings before the BOA on any appeal from the decision of the Code and Building Administrator," then it adds, "or other Town official or on any request for a variance" and it deletes "upon any request for a special exception" because, as I understand, special exceptions for BOA have been deleted from the Town Code. Mr. Robertson further stated these changes are sort of "housekeeping items," and then, in six-point-six (6.6) "B," there is clarification that when the Town Code and Building Administrator, Town Manager or other appropriate Town official speaks first in one of these types of proceedings, it is only a brief synopsis of the matter to be heard, and, as it defines later, in case of an appeal, the synopsis shall not be the Town official's opening statement, which shall be given pursuant to rule six-pointsix (6.6) "G." Mr. Robertson stated this clarifies the statement is just background but not an argument or position singular. Mr. Robertson stated he believes that is it

and the rest are just minor "housekeeping items," and if the BOA is comfortable with these changes, they can vote on them now, but if the BOA is not, the old rules are still there and they can vote on them the next time the BOA convenes. Mr. Lyons stated he is comfortable with the rules and asked if the other BOA members had a chance to review the rules. Ms. Faden and Mr. Ryer stated they did review the rules.

Ms. Faden motioned to adopt the hearing rules for the Board of Adjustment (BOA) for the Town of Millville. Mr. Ryer seconded the motion. All present voted in favor. The motion carried 3-0.

C. Hearing on BOA Application 16-01 submitted by Richard Bloch, Tax Map Parcel #134-12.00-282.00, 35715 Atlantic Avenue, Millville, DE 19967, to appeal a decision by the Town Administrative Official relating to signage.

Mr. Robertson stated before the Board gets to this application, under the BOA Hearing rule six-point-three (6.3), the Board "may delegate to an 'acting chairman' (who may be the BOA attorney) the responsibility for conducting/presiding over the hearing," if that would be the Board's desire, then the Board should entertain a motion to appoint Mr. Robertson as acting chairman to run the hearing this evening. Ms. Faden motioned to appoint Vince Robertson, the attorney, to be the acting chairperson of the meeting this evening. Mr. Ryer seconded the motion. All present voted in favor. Motion carried 3-0. Mr. Robertson asked Town Executive Assistant Matt Amerling to confirm the public hearing was duly noticed and published in all of the newspapers that are required. Mr. Amerling stated yes, the meeting was duly noticed and published.

Mr. Robertson: How the hearings are gonna be run this evening, is first, there's gonna be the introduction which will begin with hearing as advertised on the agenda, then, second, there's going to be background given by the Town Code and Building Administrator, Town Manager, or other appropriate Town official, and the only purpose of that is to give a brief synopsis of the matter to be heard. It's not designed to be an argument or a position statement on behalf of the Town, just basically how we got to the point where we have the hearing tonight. Then, the Board, if you have any questions for the Town official in the initial presentation, and again, that is simply to provide neutral background information, that would be an opportunity to ask at that point. And then, following that, there will be an identification of parties, which I will take care of. Then the appellant, Mr. Bloch in this case, will be offered an opportunity to present evidence or argument concerning the appeal this evening. Following that, if there are any statements in favor of the appellant's position from the public. After that, there is the quote-unquote "opponent's" evidence, which is, in this case, an appeal from the Town - the Town's presentation. And after the Town's presentation, there will again be statements from the public in support of the Town's position. Then there will be an opportunity for rebuttal evidence from Mr. Bloch. Finally, we'll wrap up with closing arguments, and, at that point, the Board can deliberate and determine what decision it wants to make.

So, getting back to how we're going to handle this this evening, I will just read again: The appellant hearing is a hearing on Board of Adjustment application sixteen-dash-oh-one (16-01), submitted by Richard Bloch, tax map parcel number one-thirty-five (135), twelve-point-zero-zero (12.00), two-eighty-two-point-zero-zero (282.00), again, with an address of three-five-seven-one-five (35715) Atlantic Avenue, Millville, Delaware, one-nine-nine-six-seven (19967), to appeal a decision by the Town Administrative Official relating to signage. So, with that, if we could then have the Town just provide some background as to how we got to this point.

Mr. Thompson: Good evening, thank you for being here. I'm Seth Thompson. I'm the attorney on behalf of Eric Evans in his capacity as the Code Enforcement Officer tonight. So, at this point, I'll have Mr. Evans provide some background; obviously, we've heard the tax map parcel as well as the street number, and an indication as far as what this is: a variance or an appeal. It's an appeal of his decision in his official capacity. So, if Mr. Evans could go through the applicable Code sections. And if it pleases the Board, if it's OK, I'll just have him testify from where he is currently seated.

Mr. Lyons: That's fine.

Mr. Ryer: Yeah.

Mr. Robinson: At this point, it is just the background. That's fine with me if the Board is O.K. with it.

Mr. Evans: Works for me. I received an application from Dickens Parlour Theatre on November ninth (9), for a sign permit. The sign permit was for a monument-style sign on posts, and on the bottom section of the sign, it had what I interpreted was a electronic reader-board sign. So I issued - and in your packet - a letter, basically, stating that I could not issue a building permit due to it in violation of Town Code. It's in violation in sections one-fifty-five-forty (155-40); one-fifty-five-forty-three (155-43), which is list of signs prohibited in all districts, forty (40) was definitions; one-fifty-five-forty-four (155-44), a list of signs permitted in all districts, and, under one-fifty-five-forty-six (155-46), list of signs permitted in the C-1 district. Do you want me to go through the correspondence back-and-forth?

Mr. Thompson: If it pleases the Board, if Mr. Evans could go through the - chronologically go through the exhibits that are, that should be in the packet - the parties did exchange them ahead of time.

Mr. Evans: So, in your packet, you should have Rich Bloch's application, which is dated November ninth (9), with an email with the dimensions of the property, or the building in question of where the sign is going to go 'cause that determines the square footages; a letter from Richard Bloch, dated November eleventh (11), to be included in the Board of application - Board of Adjustment

application; the application for Board of Adjustment with one photo showing "Complicity" on the sign, showing what the sign would appear as the electronic reader board. Where am I at? Another letter from Richard Bloch, dated November sixteenth (16); an email exchange from Richard Bloch on November sixteen (16); and then a letter of Debbie's response email, November seventeenth (17); then you will have a letter from me, dated November nineteenth (19), which says that I cannot issue the building permit based on my findings out of Town Code, and then I reference in there the various articles within, and then I also have the attorney's interpretation of the Town Code as well for my background. And then, with the packet, you should have also received the zoning ordinance, article for signage, public notice hearing and the Board of Adjustment hearing rules. So, that's what should be in your packet.

Mr. Robertson: And, without objection, those will be made part of the record.

Mr. Thompson: No objection.

Mr. Bloch: No objection.

Mr. Thompson: I think that's it. One housekeeping item at this point, as well, is, if it pleases the Board, I think your rules provide for swearing in or having an oath for the witnesses. I discussed it with Mr. Bloch. He and I don't have a position one way or the other on that so it's up to you anyway, but that is the stated position.

Mr. Robertson: This is a little bit of a conundrum because it's an appeal. Really, it's on the record. But, at the same time, to the extent that we're gonna have witnesses, I was gonna just sort of do that as we went through it and see how it played out with Mr. Evans, was wondering if he's gonna testify. Mr. Bloch, I know you're an attorney so - but just so everyone's on the same page ...

Mr. Bloch: Whatever you're comfortable with, that's fine with us.

Mr. Robertson: Alright. Well, does that conclude your initial statement?

Mr. Thompson: It does - in terms of the background.

Mr. Robertson: So, that leads us to Mr. Bloch. Well, let me back up before we do that. I skipped one more thing. Does the Board have any questions on the background for Mr. Thompson or Mr. Evans?

Ms. Faden: No.

Mr. Ryer: No.

Mr. Lyons: I do have one question, thank you. It seems to me there was a sign there already, so this applicant - you didn't mention in the application that

we're - that he was replacing a sign. Does that make a difference in anything that we're talking about here?

Mr. Evans: Does it *make* a difference? In my opinion, I don't think it makes a difference in the interpretation of what the sign that he placed up.

Mr. Lyons: O.K.

Mr. Evans: He did not have an electronic changer reader board sign up, and he took down his old sign and put up an electronic reader board sign, which is in violation.

Mr. Lyons: Gotcha. O.K. I just kind of wanted to make clear that it wasn't just the sign, wasn't a normal sign, signage permit, that he was actually replacing a sign, and part of that replacement is, you're saying, is against the Code.

Mr. Evans: Correct.

Mr. Lyons: I'm good. Thank you.

Mr. Robertson: Now, Mr. Bloch, you may begin.

Mr. Bloch: Thank you.

Mr. Robertson: And, if we could, just to the extent you're going to testify, do you swear or affirm that the testimony that you're about to provide contains the truth, the whole truth and nothing but the truth?

Mr. Bloch: I do.

Mr. Robertson: Thank you.

Mr. Bloch: On that point, Mr. Chairman, I would say one thing, that I - I'm not sure I'm going to be testifying, I don't think there's really any dispute on facts between the Town and Dickens Theatre. However, in the event that I bring out some facts, I certainly will continue to tell the truth.

Thank you, members of the Board, Mr. Chairman. My name is Richard Bloch, and I'm the founder and the owner of Dickens Parlour Theatre on Route Twenty-Six (26). I'm also an attorney, as you mention I'm a member of the bars of the District of Columbia and the state of Michigan. I am joined tonight by my cocounsel, Sue Bloch, who is also a member of the bar of the District of Columbia, and the Supreme Court of the United States. She is a professor of constitutional law at Georgetown University Law Center. We're here about that sign and Eric has absolutely, accurately indicated that it is the lower part of that sign with the 'Complicity' reference on it, and, 'Vanna' (Ms. Bloch), if you would distribute those (distributed printed handouts). Seth, I'll give you one too. I'm sorry, I only have one of these.

Mr. Thompson: No, that's fine. We'll share.

Mr. Bloch: This is a PowerPoint that I would like to be referencing as we go through. I'm also broadcasting on the screen there (points to TV set) for your reference.

Particularly in a small community, there is a certain welcome informality in terms of governance, but, as the community grows a bit, the stakes become higher for folks who'd like to run a business here, it's often the case that a certain tension can arise between what is regarding as unwritten ways of doing things. This is always how we've done it - processes on one hand and legislated, formal rules on the other. In the event of a conflict between those two things in a democracy, the legislated rules always have to win. That's why we're here tonight. The argument is over that sign - or, more precisely, the bottom of it. That is an electric - or electronic - changeable sign. Those words are in the statute, we'll look at them - the ordinance, excuse me. Eric has used the word 'electronic reader board,' I think, or somewheres to that effect. There is no such reference in the ordinance you'll be looking at. Not sure it makes any difference but I just want to be careful about our terminology.

The Town has repeatedly rejected applications for signs like this. That's how they've always done it, that's what they have done in this case. The application and the rejection letter is in your folder. And that letter is the most important and revealing, so I made a big copy and I want to be clear about it. It didn't say 'Millville Rejection Letter' - that was for my own benefit. The rest of it is verbatim with one exception. I put in the numbers here - one (1), two (2) and three (3) - just to make it clear that the parts of the ordinance that have been cited by Eric are section forty-six (46), section forty-three (43), and section forty-four (44). Now, Eric also mentioned section forty (40) and he indicated correctly that that's a definitions section. There's no claim here that we violated the definitions, it's simply to tell us what the signs are. And those are the sections that we will be talking about.

The Town says our sign violates the ordinance. We say it does not. We'll show you the ordinance's words, we'll ask you simply to read them and apply them to the facts. The Town, for its part, will tell you - in their own words - about what they think the ordinance says. That's what they've done in two (2) documents that are extremely important and very revealing. One is Mr. Evans' rejection letter, the other is Mr. Thompson's legal opinion that you also have before you - it's a - somewhat of a lengthy document, it's six (6) pages so I didn't put it up on the boards. I have, however, reproduced portions of it, and I'll be using that in the PowerPoint as we go through them.

In their rejection letter, and in their legal opinion, the Town has both inserted words of their own that are found nowhere in the rules, and they've dramatically edited out critical portions of the rules that simply can't be left on the cutting-room floor. This creative writing process is the only way the Town

can justify proceeding the way they've always done it, instead of obeying the very clear terms of the legislative rules. So, tonight, you'll see a very serious but very obvious mistake this community's going through. At the end of the meeting, you'll see why Eric Evans' decision is wrong from top to bottom on each and every point. But, let me say this immediately: I'm not here to trash my friend, Eric Evans. I do not conclude nor do I seek to suggest that he's done this maliciously. I'm very hopeful he will not hear my protests as somehow questioning his integrity or his motivation. Eric's one of the very good guys we've dealt with in Millville over the years and I've never known him to be anything but forthright and fully intent on doing the right thing. That's why we have Boards of Adjustment. While I'm at it, I want to extend the same disclaimer with respect to my brother counsel Seth Thompson. Seth's been entirely generous in helping get this thing going, and very delightful to work with. These mistakes - and they are mistakes - reflect no ill intent, rather they stem from folks doing things because that's how they've always been done. But those assumptions, no matter how fondly held, don't come close to reflecting the words or the intent of this ordinance.

The Millville Town sign ordinance is a pretty good document. I'm gonna put it up there in a minute. Both in terms of how it's drafted and what it seeks to achieve. Briefly stated, the rules are there to protect the safety of the citizens and the appearance of the Town. They should and they do. Whether phrased in terms of 'flashing,' 'oscillating,' 'moving,' 'blinking,' or any of the other terms that tell us what signs can and can't do, the rules prohibit motion, moving, animation. Millville doesn't want a little Las Vegas or a Times Square. They don't want - I'm gonna use the words now that you'll see in the ordinance -'flashing, blinking, oscillating lights.' They don't want bulbs that are too bright or throw the light too far. They don't want animation at all - even if the sign is manual, not electric. For example, they don't want flapping banners. We agree a hundred (100) percent with all such devices, we agree that they are properly banned in this Town according to the ordinance. We do not appeal here - or appear here - to battle the ordinance. We ask you to apply it properly. That changeable sign - and, again, when I refer to 'changeable sign,' I'm always talking about the electric changeable sign here, the bottom part of our sign. That changeable sign displays the name of the current event at Dickens and one (1), two (2), or three (3) weeks later, when the show changes, we change the name. That's why we bought it. There's no animation, no motion on this sign whatsoever. And the only place we wanna use it is in the C-1 business district. The Town's side of the story's already before us in the charging letter from Eric Evans - and in Mr. Thompson's legal opinion to the Town. The Town says we violate the ordinance in three (3) ways. Sue, could I have slide number one?

First, they say that Dickens changeable sign is animated. They say that the sign might change content every one (1), two (2), or three (3) weeks; therefore, it's animated, flashing, moving, rotating, or of a similar type. The second charge, if I could have that please, is that even if the sign doesn't do any of those things - any of the moving things that are discussed in the ordinance - it could be made to do them by someone, somehow, someday. It is capable of providing blinking

lights, moving lights, and so forth. And, finally, the Town says that even if the other two (2) claims have no basis in fact or in law, it doesn't matter because only the Town is permitted to use changeable signs. Those are the three (3) items.

Our position is pretty straightforward: every one of those assumptions is totally and demonstrably false. The sign is not flashing and the Town is *not* the only one who can have an electric changeable sign. That's why we suggest that, as we proceed, you ask yourselves, or, better yet, ask us where does the ordinance say that? And I probably don't have to issue this invitation, but I welcome any questions you may have as we go along. You all have the ordinance before you, but, before we get started with the parts that tell us what one can do or not do, this is the blow-up of the definitions in section forty (40) that Eric mentioned. And - can you see that or should I turn it a little more?

Mr. Ryer: Could you turn it a little more?

Mr. Lyons: Turn it a little more. O.K.

Ms. Bloch: And, Rich?

Mr. Bloch: Yeah?

Ms. Bloch: Would you just, like - I know you said it - but would you just make sure everyone understands that the top part of the sign is fine?

Mr. Bloch: I think we have no issue, we can - this is fine.

Ms. Bloch: The top part's fine. The bottom part's - I know.

Mr. Bloch: I wanted to look at some of the definitions, and just let me reiterate: this is the section - section forty (40) - that tells us about the sign but says nothing about how they can or cannot be used. In the Town's legal opinion, Seth correctly notes that a particular sign can fall within multiple types of categories. He's right. For example, and now may I refer to the PowerPoint presentation - for example, what is a 'business sign?' 'A sign directing attention to the business and the service, et cetera. It tells the public about the business. May I have the next slide, please?

A bulletin board. This is a sign of permanent character but with moveable letters. We may or may not agree on what a bulletin board is. I think we all have a kind of a picture of what it might be - we'll talk a little more about that. But it obviously squares with a sign of permanent character and it does have moveable letters. It is also, in the other category, a business sign. O.K. Why do we use a bulletin board? By the way, I wasn't going to get into this yet but my suggestion is that this is one kind of bulletin board. These are moveable letters. They are manual and obviously not electric. This, by the way (holds up picture of Millville Mini Storage sign) is an electric sign, not internally illuminated, it's

illuminated from outside. I don't think that's particularly germane to what we'll be talking about. In fact, it may not even be an electric sign, but, in any event, it's illuminated from outside. This one has moveable letters and, obviously, mine does not, subject to one moment that we will discuss in a moment.

O.K. So now we come to the one that I set up here in large letters. This is the changeable sign. That's what we're talking about here tonight. And you'll notice that the definition says it's a sign with the 'capability of content and change.' That's absolutely right. It has the same capability as this sign but it can be done electrically or manually, and they also include a definition of an electronic message sign or center. I don't know if that's what Eric was referring to as a 'reader board' but, in any event, changeable signs come in a variety of flavors. Here, I mentioned, is a manual sign. Here (holds up picture of First Shore Federal Bank sign) is - this actually has all three (3) - on top there's an electric sign, in the middle is an electric changeable sign, and at the bottom is a manual changeable sign. This is an electric changeable sign and it goes from temp. to time - the changing every one second. To be clear, these changeable signs differ in one very important respect that probably explains why we're here tonight. I've shown you a manual sign, an electric sign, and an electric changeable sign, but that bank (First Shore Federal) sign was flashing time and temp. It's changeable. But those are specifically permitted in Millville. So there's an ordinance that says we don't call Eric because of that.

Now, you may ask why aren't there more non-time/temperature changeable signs - like the one we're bringing to your attention tonight. I don't know but I'm guessing there are two (2) reasons. First, when Debbie or Eric tell us that the ordinance doesn't allow those signs for businesses, we tend to believe them because they're very honest folks. Secondly, it's very expensive to challenge any interpretation. Millville has charged us seven-hundred-and-fifty (750) dollars for the application to be here tonight, and another thousand (1000) dollars to pay Mr. Thompson's fees for the privilege of arguing against us. This issue is critical to us. That's why we're here. We don't have any alternative to exceed to the fees and to make the appearance for now. But there are likely others who don't want to fork over that kind of cash or who might not be able to come with their own legal team. All of these changeable signs are fully compliant with the ordinance in front of you. They're in the business district. They are not in all districts of Millville. However, there are some changeable signs that may be in all districts of Millville.

Section forty-four (44) of the ordinance - and I think I have that, thank you, it's over here. This is section forty-four (44) blown up large and we're gonna be talking a lot about it tonight, so it might be helpful as well if you can - do I have that in, no, I don't have it in the PowerPoint, but we have it in your package. This is the section that is going to be in most dispute here tonight. It says those are the, that is the list of signs permitted in all districts. In fact, let me put up three (3) of these so you'll be able to see. I'll come back to Mr. Evans' letter. And, chronologically, starting from here, you have three (3) very helpful and very important pieces of our ordinance. Starts with forty-three (43): 'signs

prohibited in *all* districts.' And that's where we get some of this language - 'flashing' signs, 'animated,' 'blinking,' 'moving,' et cetera, and there are more listed in subsection 'E' that I didn't put out there. Those are the ones prohibited everywhere. Signs permitted in all districts - and there's a list of them - we'll talk about that in much greater detail. Those are kind of the comprehensive thing. You can have these anywhere, you can't have these anywhere. And then we come to this one, which is section forty-six (46), where it gets a little more specific. It says 'signs permitted in C-1.' That's the district where we are.

I'd like to take a moment and enlist Seth's aid in clearing up a question I had. It says 'signs as listed in one-fifty-five-forty-four (155-44).' That's section forty-four (44) over here. These signs are permitted in all districts without question. They are signs that are permitted in C-1 for the same reason, they're allowed everywhere. Then it goes on to talk about one (1) business can have one (1) sign, et cetera. In Eric's letter, he says section forty-six (46) lists the permitted signs for the C-1 district - our sign is not in that list. My question, please, if I may, is - is this the list that that's referring to?

Mr. Thompson: It is.

Mr. Bloch: O.K. I thought it was.

Mr. Thompson: If I - hopefully, this will clarify for the Board. So, one-fifty-five-forty-six (155-46) 'B' is specific to the C-1 district, so it's incorporating, by reference, the list from one-fifty-five-forty-four (155-44) of all of the permitted signs that are in all of the districts. And then it tacks on the ones that are specifically permitted in the C-1 district. So, again, subsection B-1 is saying 'yup, you get to use any of the signs permitted in all districts,' and then B-2 is 'and if you're a C-1, you also get these signs.' So, I think you and I agree on that.

Mr. Bloch: Yeah, we do, and I thank you very much for that. May I inquire if there's any question about what that's doing because I just don't want to confuse anyone. So that's the number one claim.

So, it's time to look at those and drill down a little bit on exactly what that language says and what it means. As you look at the various terms, especially in - I think they fall in - section forty-three (43) - that's where they use all the words about 'flashing,' 'animated,' and so forth. But I think you'll see, if you read the entire thing, that the ordinance in question does *not* prohibit signs on the basis of whether they're plugged in, whether they're electric, whether they're manual, whether they are message boards, bulletin boards, reader boards, or, indeed, what they could be capable of doing. The ordinance discusses them in terms of what they actually do. That's critically important. The goal of these rules - one we fully endorse and fully abide by - is to ensure that business signs not be a threat to the safety of the public, they don't be a blight to the Town's appearance. What Millville wants is to have a sign that is

animated, they didn't want movement, they didn't want blinking, moving, I won't go through that list again. But that's what these words actually say about what signs actually do. And that's why the words 'electric,' 'manual,' 'electronic,' 'capable of,' 'message board,' 'reader board,' never appear in any of the ordinances that say what you can do or what you can't do. That's why. Because the Town - correctly in my judgement - decided 'we're not gonna worry about slicing these definitions - oh, this is a reader board; oh, it isn't. We're gonna say what does it do. And if it does any of these things we don't want, it's out.'

The Town says that because the sign is changeable, because it changes once every week, or once every two, or once every three weeks, when the show changes, it's, therefore, flashing - like this one (holds up picture of First Shore Federal Bank sign). That is a flashing sign. The temperature/time sign. Time, temp. Time, temp. Once per second. And, as I indicated, that could be a clear violation of the ordinance for most signs except the Town has accepted time and temperature signs. They're O.K. But it's important that you understand that during the two-week run of 'Complicity,' that sign would not have changed at all. During that same period, the flashing sign - the sign that's really flashing - would've flashed one-million-two-hundred-and-nine-thousand-six-hundred (1,209,600) times. I went out with a stopwatch. I didn't stand there for two (2) weeks - take my word for it.

Mr. Robertson: Can I ask you a question, though? That's true and I get the point you're trying to make, but, also, the time-and-temperature sign is specifically permitted under the Code.

Mr. Bloch: Absolutely.

Mr. Robertson: So it's a little bit of an 'apples and oranges' comparison, isn't it?

Mr. Bloch: Well, only if you say that the apples and oranges is if that is permitted and ours is prohibited, but that's why we're here. The 'apples and oranges' comparison, I think, that really is a problem. These are really apples and oranges is where you say 'that kind of flashing is the same as the sign that changes once in two (2) weeks, or no times in two (2) weeks' - that's my 'apples and orange' comparison. May I have the next slide, please? O.K. And could we move that middle sign just a little bit to the right? That's great.

O.K. And that's the rehash of the words that are used to describe - but, one more word in there. Section forty-three (43) prohibits flashing, animated signs that 'provide blinking, moving, animation.' I'm coming to the part - the second part of the argument for the Town, because that word provides the basis for a second argument. The Town says that even if the sign does *not* do any of these things, even if it doesn't flash, revolve, blink, once you conclude that it's in violation because it can 'provide' those flashing things - what they really mean by 'provide' is it is *capable* of flashing - that someday, some night, someone might cause the sign to actually flash, oscillate, et cetera. That's exactly what

the Town says on page six (6), paragraph three (3) of its opinion. They say there is an overall prohibition against signs that quote 'provide blinking, moving, animation.' May I have the next slide?

The word 'fiction' is mine. The quote, however, comes from the legal opinion. It says that the language of the ordinance bases the prohibition on the sign's capabilities in this Town, as opposed to how the sign is actually used. That's why I say it doesn't matter if it is not used to provide any of those moving things. Doesn't matter - as long as it's *capable* of doing that. There are two (2) problems with what I think is a remarkable conclusion. My car - and I suspect most of ours - is capable of exceeding the speed limit through the Town of Millville. But it doesn't. And the Town shouldn't be - and, most likely, is not issuing violations based on the use of our cars because they might be able to speed, because they are *capable* of speeding. But, much more important, the words 'capable,' 'capabilities,' 'might have,' whatever, never appear in the ordinance that is in front of you. The words that do describe what they actually do - what they actually wanted in motion - are all over. So the Town's statement - that the ordinance bases the prohibition of the sign's capability as opposed to how the sign is actually used - is fiction. The truth is precisely the opposite. May I have the next slide, please?

The language of the ordinance bases the prohibition on how the sign is actually used and not on the sign's capabilities. While we're at it, let me indulge in a moment of fiction myself. With respect to that word 'provide' that has driven this portion of this Town's argument, it's a winter night, it's ten (10) degrees out, fifty (50) degree below wind chill, a lone straggler is walking along Route Twenty-Six (26), past this very building. He's tired, he's cold, he's hungry, and, in the window of the Town - by the way, he's walking because the Town took his car away because it was capable of speeding. He sees the sign in the Town's window. The sign says 'Millville Town Hall provides shelter for the cold and weary.' He comes to the door, the mayor answers the door, he says, 'Thank God, you're here! I'm cold and weary.' And the mayor says, 'Well, you know, the sign is correct. But that means we are *capable* of providing. We actually don't.' And he closes up the door. Finally, and this is the last in the sign's, sorry, in the charges on the violation, the Town says that the only changeable signs are those that may be used by the Town. I didn't read that exactly as Eric put it, but I will.

First, let's see what the language actually says. In section forty-three (43), it's right over here on the right. It's the first one. It says - its title 'signs prohibited in *all* districts.'

Ms. Bloch: You mean, permitted.

Mr. Bloch: Sorry, no, it should be - excuse me, I'm sorry - have the wrong one - forty-three (43) says 'signs prohibited in all districts.' You can't have flashing, can't have animation, et cetera. Forty-four (44) says 'signs *permitted* in *all* districts.' Now, for purposes of what I'm about to do, I'd like you to take a look

at this sign (holds up photo of Millville Town Center Giant Food Center sign). This is the Giant mall sign. I would suggest to you that that's kind of the standard business illuminated electric sign. Please, by the way, are changeable. When someone moves out, they pull the one slide and put the other slide in. The top one is not. But I want to ask you just about that sign without worrying about what those are, other than to note that they're perfectly legal. Take a look at section forty-four (44), in the middle there. These are signs that are permitted in all districts. There's a list of them: permanent subdivision, temporary construction, temporary signs, instructional signs - I'm gonna skip over this one for a minute - and the political signs. If you think about it for a moment, this sign is *not* listed in that portion of the ordinance, doesn't appear. It's not any of the temporary ones, it's not a subdivision sign, it's not a political sign. Does that mean that that sign is permitted in all districts? Clearly not. That would be absurd. But we can check because we can look into the next section, we know it's - sorry, we can check in the next section to see whether it is prohibited in all districts. Well, it's not there either. It doesn't list the Town sign - I'm sorry, the Giant sign. And it wouldn't list it, and we wouldn't have a problem, unless it were somehow flashing or doing something wrong. That sign doesn't appear in either of these ordinances. What do we conclude from that? Not much. All it means is that the mere fact that this perfectly legal sign is not listed in section forty-three (43) or forty-four (44). Doesn't tell us anything about whether it can be used in the business district. So when the Town says section forty-four (44), 'your sign is not listed in section forty-four (44).' When the Town says the reason that it's not listed, sorry, the reason it's no good is because it's not listed, is not within that list, they're dead wrong. There may be a reason that we can't use it, but it's not there and it's not there and it's not there. Why? Because the Town, when it drafted this, made the right decision, which is: some signs can be used as long as they're kept in the business district and as long as they don't violate the things we don't want these signs to do. That's the ordinance that we have in front of us. So, you may ask, how does the Town reach such a totally contrary result? The answer is: by editing the ordinance.

Mr. Robinson: May I ask a question? Because I am really struggling following the logic of that Giant sign. Because, in the C-1 district, an on-premises sign, when the one lot and multiple tenets is allowed a sign that shows each of those tenets—

Mr. Bloch: Yeah.

Mr. Robertson: —are you saying that because that sign, the face of that sign, gives cause to apparently a permit every time you change the face of it? That it's a changeable sign? Because that's not how I would read the Code.

Mr. Bloch: Fair enough. I won't argue with that. I would say - I don't take *any* position on whether it requires a permit each time it changes.

Mr. Robertson: Well, it seems like that's contrary to your argument then. Because you're saying that, ya know, it's a changeable sign—

Mr. Bloch: Yes.

Mr. Robertson: —and so if it's changeable - and that Giant sign is changeable - and you change the face of that Giant sign, you need a permit every time you change *any* sign, you're gonna need to pull a permit whether you change it every hour or every two weeks or every time a tenet changes. That just seems like your argument is — I'm struggling.

Mr. Bloch: I have no argument about whether anything needs a permit or not. My argument solely is - as a matter of fact, I'm content to have us totally disregard the question of those sliding panels under the Giant pharmacy sign. Maybe they need a permit, maybe they don't. That's really not my issue. I am content to say that whatever it is, they're perfectly legal. But this is the one I'm talking about and this is the one I'm saying to you does not appear in the section that lists signs that are permitted in all districts.

Mr. Robertson: But would it be listed in the next phrase that's under 'signs permitted in C-1 (located under 155-46B)?' So there's signs that are permitted in all districts one (1) through five (5), including B-4 —

Mr. Bloch: Exactly.

Mr. Robertson: —and then you get down to B-3, which talks about the lot and the permitted detached sign—

Mr. Bloch: Absolutely right.

Mr. Thompson: And just - I don't mean to interrupt the conversation, but if we're gonna look at C-1, we actually should be looking at C-2, if we're gonna talk about Giant because it's technically zoned C-2.

Mr. Bloch: O.K. That's fine. You can look at any one of those. My answer is the same. That *that* sign is O.K. for whatever reason, and whatever sections you look at. But it's *not* listed in 'signs permitted in all districts.'

Ms. Bloch: Rich, you're just responding -

Mr. Bloch: Sorry.

Ms. Bloch: All you're trying to say is reason one (1) is not a reason that your sign is not allowed. You can find other legal signs that are also not listed.

Mr. Bloch: Right. Yeah. All I'm saying - there may be reasons why it should or should not be allowed—

Ms. Bloch: Yours. There may be reasons why *your* sign should or should not be allowed, but the fact that it's not in the list—

Mr. Bloch: All I'm saying it is the fact that it is not in this list does not mean it can't be legal. And my proof of that is: here's a sign that's not listed in that list that is perfectly legitimate. That's my only point.

That's totally contrary to what Mr. Evans says here. He says 'the *only* changeable signs, according to article forty-four (44) - section forty-four (44), the only changeable signs permitted would be for the Town, for municipal buildings, police, fire, and ambulance departments.' And I'm saying section forty-four (44) doesn't tell us *anything* about what can be permitted or not on the part of—

Ms. Bloch: Yeah. I'm sorry.

Mr. and Ms. Bloch inaudibly converse.

Mr. Bloch: Correct.

Ms. Bloch: You wanna go to (inaudible). You wanna go to (inaudible) The only changeable signs (inaudible). Signs permitted in all districts are changeable signs (inaudible)

Mr. Bloch: Yeah. Let me just leave that one point and try and - because jumping back and forth like this is difficult. And it's what led to misinterpretation in the first place. Just come away with this point. Mr. Evans says the only changeable signs permitted would be for municipal buildings, that's what he says section forty-four (44), item 'F' states. It doesn't. It doesn't state that. Those signs that are perfectly legitimate are not listed there *and*, beyond that, the word 'only' doesn't appear anywhere. The Town's legal opinion from Mr. Thompson takes the same tack. May I have the next slide?

The charging letter says - it's in the first paragraph - the only changeable signage permitted would be for municipal buildings. The legal opinion says forty-four (44) 'F' - that's the highlighted red - expressly provides that changeable signs are only permitted for municipal buildings. And, finally, it's reiterated on that same page, changeable signs, such as Dickens', are *only* permitted for the municipal buildings and the fire department and so forth. That word 'only' simply doesn't appear in section forty-four (44). The reason I'm troubled, and I'm focusing on the word 'only,' is it leads to the totally false conclusion that stated in the legal opinion that - may I have the next slide? - changeable signs are not available for businesses such as Dickens Parlour Theatre; or the equally false conclusion of the rejection letter that the *only* changeable sign permitted are for the Town, the fire department, et cetera. Which brings me to the other intentional mischaracterization - by believing three (3) words that are in section forty-four (44) that the Town avoids like the plague. The words are: *in all districts*. May I have the next slide?

The title is 'signs permitted in all districts.' May I have the next slide, please? The charging letter - Eric's letter - says - remember, it says 'in all districts' - he says the only chargeable, changeable signs permitted - he doesn't say permitted in all districts - he says permitted, would be for municipal buildings, police, fire and so forth. What the Town doesn't say is the only changeable signs permitted in all districts would be for municipal buildings. May I have the next slide, please? The legal opinion, not the charging letter - same title. In all districts, what the Town says: changeable signs such as this are only permitted for municipal. But what the ordinance says is they're only permitted in all districts for these people. The Town is the only entity - and by that, I mean police, fire, as well - that can use a changeable sign in all districts. That's what it means. Can I have the next one? The Town repeats that same thing on page six (6). Changeable signs are only permitted, they say, but it doesn't say that. It says they're only permitted in all districts. It means that signs that aren't on that list can't be in all districts. We can't have business signs in the residential district, but it doesn't mean you can't have them in the business district.

Mr. Robertson: Where does it say that you *can* have them in the business district or the C-2 district or the C-1?

Mr. Bloch: Nowhere.

Ms. Bloch: Can.

Mr. Robertson: Where does it say that you *can* have changeable signs in the C-1 district?

Mr. Bloch: Well, I would refer you to section forty-six (46) when it discusses - it doesn't - I will tell you right out, it doesn't say the words 'you can have these changeable signs.' It doesn't say you can have these signs either - anywhere. But we know they can.

Mr. Robertson: I don't agree with that because that's an on-premises sign - it's specifically allowed—

Mr. Bloch: Mine is an on-premises sign too.

Mr. Robertson: But that one (the Giant sign) is specifically allowed as advertising tenets with businesses that are in there, with a permit.

Ms. Bloch: And what's happened?

Mr. Robertson: Nobody's claimed that's a changeable sign - the Giant sign.

Mr. Bloch: No, that's true. But what I'm trying to show you is if you provide for businesses to have signs - and that's what is done and particularly in C-1 or C-2 - unless you point to something that says 'oh, but that sign is forbidden,' then the sign is O.K. And that's *exactly* why these other signs exist. What I'm trying to

show is that when Mr. Evan - we can argue whether you think this is a flashing sign or not but I'm really concentrating on this 'cause this is still very important - when Mr. Evans says the only changeable signs permitted are for the Town, it's not what this ordinance says. It says the only changeable signs *in all* districts. And that makes a lot of sense. The police and fire should be able to use them in all districts. They have compelling needs, community needs, and they need to be met. We don't. That's why they have it that way. Ms. Faden, I think you - you look confused. I'm happy to straighten out anything you might have.

Ms. Faden: I just don't understand your position relative to that language.

Mr. Bloch: Relative to what, please?

Ms. Faden: I don't understand your position relative to the language where you keep on going over the definition, but I don't understand how that helps or hinders your position.

Mr. Bloch: I think we can all agree—

Ms. Faden: I'm lost, I think, at what point you're trying to make here relative to that language.

Mr. Bloch: O.K. Section forty-four (44)—

Ms. Faden: Yes.

Mr. Bloch: —is what the Town says—

Ms. Faden: Right. What signs are permitted in all districts.

Mr. Bloch: Right.

Ms. Faden: Correct.

Mr. Bloch: Our sign is clearly not on that list.

Ms. Faden: Correct.

Mr. Bloch: And they say that's the reason that you should conclude, because if not on this list—

Ms. Faden: And why is that erroneous in your mind? You're presenting this as if it's a mistake.

Mr. Bloch: I haven't said it's erroneous.

Ms. Faden: Oh, O.K.

Mr. Bloch: It's not on the list. That's true. It's also true that they say that's the reason that it can't be permitted.

Ms. Faden: O.K.

Mr. Bloch: What I'm saying is this - that reading would mean that this sign (the Giant sign), which is not a changeable sign, but it is a business sign - this one, couldn't be legal either. It's not on this list.

Ms. Faden: O.K. I hear what you're saying. I don't know that I would agree.

Mr. Bloch: I'm sorry. I didn't hear you.

Ms. Faden: I said I hear what you're saying but I don't know if I would agree with that interpretation.

Mr. Bloch: O.K. Well, I guess we could go down the list, but I think you'll—

Mr. Robertson: Can I just try and make a summary of what you're saying?

Mr. Bloch: Please.

Mr. Robertson: I think what you're saying is if you started and stopped with just section one-fifty-five-forty-four (155-44), ya know, that doesn't help the Town's case. But—

Mr. Bloch: It doesn't help *either* of us.

Mr. Robertson: Yeah. I think I would agree with that, ya know—

Mr. Bloch: It doesn't say anything about whether the changeable sign should be prohibited. We can't tell anything because it doesn't say anything. It only talks about these signs - permanent division, subdivision, temporary real estate, I won't go through all of them - but none of them is this. So, we don't know - we need something else to tell us whether this normal sign is legitimate. And I use that only to show you that section forty-four (44) doesn't help us - either way. That's my point. And that's an important point too. Because if they're right, if the absence of a changeable sign from this list - a changeable sign for a business - I grant you it's not a changeable sign for municipal - if the absence of that means it's prohibited, we're done, we lose, no question about it. What I'm saying to you is it doesn't come close to saying that. And, in their recitation of talking about it, they never use the words 'in all districts.'

Mr. Lyons: So, excuse me, if I could try and sum up, you're saying that, basically, he shouldn't have used section forty-four (44) to disallow your sign?

Mr. Bloch: Right.

Mr. Lyons: He should have gone to 'signs of the C-1 district' or maybe 'signs *prohibited* in all districts?'

Mr. Bloch: Sure. I agree with that entirely, Mr. Lyons. And I would ask—

Mr. Lyons: That's the *only* thing that I'm getting out of *all* of this.

Mr. Bloch: You're dead right. And I would ask—

Mr. Lyons: Number three (3) - what you're trying to get a point across is that he used this and he can't use that. So he may have used something *else*, like 'signs prohibited in *all* districts' but, dead on, he can't use that. Is that what you're trying to say?

Mr. Bloch: That's a hundred (100) percent what I'm trying to say. And I would urge—

Ms. Bloch: But you don't think that your sign is flashing.

Mr. Bloch: Well, I was about to get into that, 'Vanna.' She's right, as usual. I would urge you to do exactly what you just said. Yes, you're right. Section forty-four (44) doesn't do it. It's not on the list. And it doesn't tell us - the way the Town says it does - so you gotta look anywhere else, do that. Section forty-six (46), item 'B,' I think we've agreed on that before. When it says it's not on the list, they're talking about this list.

Mr. Lyons: Well, you're assuming that they're talking about that list.

Mr. Bloch: I thought we had a consensus on that from Seth.

Mr. Lyons: Oh, O.K.

Mr. Bloch: However, I don't want to be tricky about it.

Mr. Thompson: No, right. And I don't want to - I don't know if this is out of procedure - I suppose you'll—

Mr. Bloch: No. Go ahead. Please.

Mr. Thompson: Just to address the issue. There seems to be some confusion. So, one-fifty-five-forty-four (155-44), part of the Town's position - the Town Code Enforcement Officer's position - would be those signs are prohibited in all districts. So, it doesn't matter if you're in C-1, C-2—

Mr. Bloch: Permitted.

Mr. Thompson: I'm sorry. Permitted. I apologize. So, if you're in C-1, C-2, residential, you can put up a temporary yard sale sign, you can put up your

political sign, you can put up your instructional sign, and you can put up a changeable sign if you are a municipal building, police, fire, or ambulance department.

Mr. Bloch: We agree with that a hundred (100) percent.

Mr. Thompson: That's not the end of the inquiry for any given district. Right? So, those are allowed everywhere. So, I think we all agree on *that*. The next issue is, O.K., well, what else is permitted in your district. Right? So, that isn't the end of the inquiry. We then have to look to, for instance, the Giant is in C-2, and section one-fifty-five-dash-forty-six (155-46) 'C' then goes on to identify shopping centers and signs in terms of 'naming the center and listing the businesses within the shopping center.' Right? So, it's not that you're constricted in a given district, to just one-fifty-five-forty-four (155-44), you have to look at the regulations that also allow for additional signs.

And if I could take a step back to this notion that 'if something is not prohibited, it's permitted,' I think is a problem, because if you look at the way the entire chapter is organized, it clearly indicates these are permitted anywhere; these are permitted in your district - in addition to the ones that are permitted anywhere; and these are prohibited everywhere. So, if you were to buy the argument that if a sign is not prohibited, it is permitted, you effectively have read out several sections of the Code. And, just from an interpretive standpoint, you don't do that. That's not surplusage there. That language is in there for a purpose and I think when you read through this article of the zoning ordinance, it's clear. These are permitted everywhere, these are permitted in these given districts, and these are prohibited everywhere. So, that's my position. I hope that's - I hope that helps to clarify - I find the claim a little bit confusing in terms of the 'permitted in all districts.' The Town is going to agree the signs that are listed in one-fifty-five-forty-four (155-44) are permitted in any and all districts. It doesn't - if somebody walked in for a sign permit for a permanent subdivision, Eric doesn't even have to look at the zoning map. That's permitted. So, hopefully that helps to clarify our position on - I don't know where Mr. Bloch and I parted ways on that.

Mr. Bloch: Well, I - by the way - I welcome this (inaudible). I think, for the most part, we don't part ways at all. I agree *entirely* with Seth's - where he started out, by - he nailed it - just as did you, Mr. Lyons. This doesn't tell you anything about - it doesn't end the inquiry. O.K.? So, you look to other sections. In looking to those other sections - here's where we may part ways - I'm not sure I understood what was said by the overall structure, but what I do say is: look to all of those sections - by the way, look to C-1 for us, not to C-2, please, 'cause that's where we are - look to all of them and ask 'where is it that this particular sign is prohibited?' And, if it is not, it's very difficult for me to understand how we can say it's prohibited. We already know that it's not prohibited here in one (1) - that's the first section they sited - because Council was good enough to agree, I think, that that listing is what they're talking about with this.

Mr. Thompson: I suppose, just to clarify again, I think the basis of the denial that's labeled as one (1), in yellow, is premised on the fact that a sign needs to be permitted somewhere. So, the sign needs to be within the list of permitted signs. That's the Town's position. So, that's why basis number one (1) - the Town feels is valid. It's not - everybody agrees it's not one of the signs permitted in all districts. The question then becomes 'is it one of the signs that's additionally permitted in C-1?' And the Town's position is: it's not one of those.

Mr. Bloch: Understood. We disagree on that and the reason I do is because there are other signs in exactly the same stature that we know are permitted and should be. What we have here is a sign that doesn't violate - incidentally, I haven't gotten to it, the third one here. Our position is that it doesn't violate, it's not flashing, it's not moving, it's not doing anything that is prohibited here. So, yes, I guess if what the Town says now is 'well, O.K., maybe it's not violating any of the things that we said, what we should do now is look to the other sections 'cause we'll find the answer there' - well, I guess I have a lot of problem with that. I would've liked to have been told that it's not listed, it's not permitted anywhere. But I just went into the—

Mr. Robertson: Let me say this - a little bit. In section one-fifty-five-dash-eight (155-8) of the Code—

Mr. Bloch: Fifty-five-eight (55-8)?

Mr. Robertson: Eight (8), which is the zoning regulation - literally, that's not the sign regulation, but it talks about 'Permitted uses are listed for the various districts. Unless the contrary is clear from the context of the lists of other regulations of this chapter, uses not specifically listed are prohibited.' Wouldn't that be right contrary to the argument you're trying to make?

Mr. Bloch: No, it would not. Because in section one-fifty-five-forty-six (155-46), it says: 'Any lot with only one (1) business shall be permitted one (1) detached sign displaying the name of the store or use' - and I've deleted a lot of words, and please read them so I'm not taken out of context. It says the above, which ours does qualify, are permitted provided *that* they shall not be flashing, oscillating, et cetera. Again, we're talking about what the sign is doing, not how it is made.

Now, Seth has said, well, you kind of gotta take it all and look at the whole shape of it. If so, you also have to pay attention to the words that are used and the words that are not used. The word 'electric' nowhere appears. The word 'capable of' nowhere appears. So, yeah, I suppose I would agree - take a hard look to see where this sign fits in. But I think it's a very serious mistake to say 'well, because it doesn't mention changeable signs in these other districts, they must not be permitted.' In fact, this says changeable signs are *fine* for the Town. There's no objection to the fact that it's a changeable sign. The objection here is that it's not being used by the Town.

Let me just summarize, for the moment. What I've just tried to show you is that no regular business signs of any kind are listed in that section forty-four (44), and it doesn't mean that businesses can't have signs. It means they can't have changeable signs. It means they can't have them in all districts. The omission of the terms - the rewriting of the ordinance in the Town's description of it - those are not accidents or oversights, they are consistent attempts to shape, in convenient language, with a long-held belief that 'well, we just don't allow those things.' But you gotta find it here. One more minute.

Dickens Parlour Theatre is unlike any other business in this community for this reason: each week, we have one and only one product, and it has to be sold before the people come in the door. We're not a supermarket, where people can stroll and pick out what they like from the aisle. And we aren't a restaurant where they can look at the menus and say 'well, I think I'll have that tonight.' No one ever entered a theater, sat down and wondered what it was he or she is about to see. We need to be able to inform potential patrons outside as to what is happening inside. We're not asking to be singled out or excused from the reach of the sign ordinance. We're here to ask you to enforce it. A changeable sign is perfectly permissible in the hands of the business community as long as it is *not* used in a way that the ordinance specifically says should not be used. Dickens Theatre is a hundred (100) percent in compliance with both the letter and the spirit of this ordinance, and we respectfully ask for correct an interpretation that is disastrously wrong for us. Thank you very much for your attention, I really appreciate it.

I will certainly be happy to answer any questions now or later.

Mr. Robertson: Are there any questions from the Board?

Mr. Lyons: Could you turn this bottom sign here over one more time? 'The above are permitted provided that—'

Mr. Bloch: Oh, sure.

Mr. Lyons: I just wanna - I just wanna see that again, so - now flip it over so I can see what's provided—

Mr. Bloch: This is just to summarize?

Mr. Lyons: Yeah.

Mr. Bloch: This is where we get the authority to have a sign.

Mr. Lyons: Right.

Mr. Bloch: And it describes in that section. And then it says 'provided that we can't have it if they shall be flashing, moving, rotating, oscillating or of a similar type.'

Mr. Lyons: O.K. And is that a direct quote?

Mr. Bloch: As far as I know, it is.

Mr. Lyons: O.K. Thanks. That's it for me.

Ms. Faden: So, yeah, one other question, I guess. When you look at one-fifty-five (155) 'N,' is it your contention that it says 'signs that provide,' that that cannot be construed as signs that are capable of blinking, moving, animation, revolving?

Mr. Bloch: Yes, I do say that. And the reason I say it is that, first of all, I don't think that's a sensible use of the word 'provide.' It's a strange use of the term, anyway. But - and I use that kind of silly thing about the window sign - if you're gonna provide it, it means it's happening - that's why they say blinking, moving, not 'capable of.' And, secondly, the word - I mean, it *does* mean capable of - and the words 'capable of' don't appear anywhere in the ordinance. Now, that said, they do appear in the definition. But we know that doesn't tell us whether we can use it or not - it just says what it can do. It doesn't - the drafters of this knew how to write the words 'capable of.' They didn't. They said the signs have to 'provide' it. I hope that's responsive to your question.

Ms. Faden: Yes.

Mr. Bloch: I guess one thing - yeah - we have a sign on our building that we change manually (showed photo of outside sign attached to Dickens building). We change that. We go out and pull the letters off and put the new letters on. It's a changeable content. That's why we put this up.

Ms. Bloch: That's allowed.

Mr. Lyons: Let me play devil's advocate here, I guess. Is that capable of flashing?

Mr. Bloch: Is it capable of flashing?

Mr. Lyons: I mean, I see the marquee lights around it and I'm wondering if 'O.K. _'

Mr. Bloch: Actually, it is. But we don't.

Mr. Lyons: But you don't.

Mr. Bloch: Actually, to be complete in my response, if we attached a controller to these - what are sometimes called - chaser lights, and set it to position one (1), they would flash. If we set it to position two (2), they would chase. We don't do that.

Mr. Lyons: O.K.

Mr. Bloch: Now, one other point, if I went out and changed this manually, if I somehow went out and changed the title, I take it that that would *not* be abusive to this ordinance. I don't know - there, too, I look in vain to find out why that would be offensive to anything the Town wants in its ordinance. This is a good ordinance. It stops this place from looking like Las Vegas. And that's what we're doing too. Thank you.

Mr. Robertson: At this point, what the rules say, is to see if there's anybody who would like to speak in support of the appellant, from the public. So, if there's anybody here this evening who would like to speak in support of Mr. Bloch, now's your opportunity.

Mr. Davis: I would. My name is Bob Davis. I am the co-founder - with Mr. Bloch of BART, which is the name of our repertory theater. We perform at the Dickens Theatre in the wintertime. We have brought, in the last two years, a lot of theater into this area, and our reason for being is to raise scholarship money for kids in the high schools. That's why - what we're all about. We don't make any money - it all goes out. This year, we will provide five (5) scholarships for kids who are interested in the arts. We have recently done 'Complicity,' which is one of my plays - I'm the resident playwright. The first week we had about a hundred (100) people come to see the three (3) performances. Mr. Bloch put that sign up. The next week, we had a hundred and twenty-eight (128) people come and see it. Now, whether that's directly related to that sign, I'm not going to presuppose that. But, there was a twenty-eight (28) percent jump in our attendance, which means more money for the scholarship programs, more money for the community, and more involvement. We're supported by the Chamber of Commerce, who wants us to keep the theater going in the wintertime, and providing this kind of entertainment to attract people into Sussex County. I'm particularly into this region. So, I believe that this sign is an important factor. Seeing that sign on the back wall is extremely difficult if you drive down Route Twenty-Six (26). And, matter of fact, it's very distracting to turn and look at it. This is not. So, I totally support that from the BART standpoint, and would like Council to appreciate our position on this. Thank you.

Mr. Robertson: Thank you. Is there anyone else who would like to speak on part of the appellant?

Dr. Scheer: Hi, my name's Dr. Abraham Scheer. I'm the director of neurology at Beebe Medical Center, and I'm just here as a member of the community. And I just kind of heard your argument so I just was gonna put my two cents in if I may, and I think any sign is changeable. So, I kinda - ya know, I heard this whole argument about changeable and not changeable. I've never seen the sign flashing, I go by a lot, I've never seen it flashing, I've never seen anything in violation in any of the ordinance. So, yeah, I'm not an attorney or anything like

that, but I'm kinda hearing - well, what was said back and forth, and when the plans were made, and I don't see any problem with the sign. That's just my opinion. Thank you.

Mr. Lyons: Thank you, doctor.

Mr. Robertson: Thank you. Anyone else would like to speak in favor of the appellant? It would appear there's nobody else that would, we'll now turn it over to the Town.

Mr. Lyons: Can I ask for just a short recess?

Mr. Thompson: Sure.

Mr. Robertson: Sure.

Mr. Lyons: Thanks. (The hearing went into recess at 8:26 p.m.)

Mr. Robertson: We can reconvene and go back into session. (The hearing reconvened at 8:29 p.m.)

Mr. Amerling: We're on.

Mr. Robertson: We're on? Great.

Mr. Thompson: Mr. Acting Chair, the Board - Seth Thompson here on behalf of the Code Enforcement Officer. I just want to make some opening comments. Hopefully, I can clarify where the Town Code Enforcement Officer differs from the appellant's position. So, if we follow through - number one (1), we did discuss this to a degree during the appellant's presentation, but the basis for the rejection in number one (1) - and I would remind the Board that any of the bases in our position is cause for the denial of the application. So, looking at number one (1), it's a combination - chapter one-fifty-five (155), article nine (9), section forty-six (46), item 'B,' is a combination of one-fifty-five-forty-four (155-44), and then the additional signs that are permitted for the C-1 district, which is where this property is located. So, I think we all have agreement in terms of one-fifty-five-forty-four (155-44). I did hear some argument that changeable signs for municipal buildings, police, fire, and ambulance departments is somehow not an exclusive list. The Town's position would be: it is an exclusive list, there's no language that would indicate it goes beyond those.

Mr. Bloch: I'm sorry, Seth. We'll stipulate that those are the only ones that can use it in all districts, if that's what you're saying.

Mr. Thompson: And I suppose - well, I guess it sounds like we where part ways there - that - I guess that argument is somehow that if the Town - well, I don't know - that somebody could use a changeable sign in one (1) district but not all

districts, we don't agree with that position. I think the plain meaning of it is these are the signs that you're permitted to use, regardless of what district you're in, and it's somewhat akin to the Town's overall zoning ordinance that provides an exemption for municipal buildings. Frankly, they adopt the Code so they're able to do that. Now, here, that's a little broader than that, obviously, because it includes the police, the fire, and the ambulance. But our contention is that it's not within one-fifty-five-forty-four (155-44) based on the fact that that is a very limited set of buildings that can use a changeable sign.

And here's where we have to go through a little bit of history. So, the changeable sign ordinance that added that language, as well as the definition, was adopted in 2009. And that's important in that a very simple concept in zoning - but certainly applicable in signs - is you can have pre-existing, nonconforming signs. So, if the rule wasn't in place prior to, then, see, but then that sign suddenly becomes non-conforming, the Town doesn't necessarily have to make that person take the sign down. It's simply a pre-existing, nonconforming sign, and the Town's article on signage provides for pre-existing, non-conforming signs. So, again, that's an important date in that when you see other signs to the extent that somebody would say those are changeable, it's important to know - and you'll hear from Eric - when those signs were actually put in place. For instance, the First State Federal sign most likely pre-dates the Town's own zoning ordinance, so they weren't made to take that sign down. So, that's why we have to - Mr. Bloch, in his opening, said, ya know, 'the rules need to be written' - we're focusing on the rules that are written today. And you do need to know a history in order to determine whether different properties are pre-existing, non-conforming, but, again, you need to look at the rules of today. I don't think it's fair, in terms of an interpretive standpoint, to say, 'well, that sign is permitted, therefore, mine must be permitted.' You need to know the history of those particular signs to make an apt comparison.

In terms of save - and certainly for the public - and Mr. Bloch, he is an asset to the Town. If anything, the Town is trying to make sure everything is being applied evenly. The Town isn't allowed to placate this - and it shouldn't. So, to the extent that people like the idea of having, being able to change that, there's a process for that - that being changing the ordinance. If it no longer is good policy, then the ordinance needs to be changed. But, ya know, here we're strictly interpreting the ordinance as it exists today. So, if it's people might like this particular appellant, this would be the Town would take the same position if it was somebody they didn't particularly care for or a use they didn't particularly care for, coming in tomorrow. So, we have asked - again, this is a strict interpretive issue - so that's really where the Board needs to focus, and, I think to a degree, we've gotten kind of 'in the weeds' on some of this.

So, on the first basis, again, the C-1 district. So, looking again at that language, the C-1 district - in addition to the signs permitted in all districts - also allows for a business sign, and it can be a detached sign, they also have provisions for a wall sign, or, let's see, or a projecting sign. The important element there is that it needs to be displaying the name of the store or use. The use of this

property is actually a performing arts theater, that's how it's defined, as opposed to a pharmacy or as opposed to an auto mechanic. It's a performing arts theater, which is why the first part of that sign is absolutely fine, right? It says Dickens Parlour Theatre, that's the name of the establishment, that's also the use of the establishment. Below, 'Complicity' is not the name of the facility and it's not the use of the facility. So, that's within one-fifty-five-forty-six (155-46) 'B-2,' and so even before you get to this notion of the sign's not being able to flash, you have to look at that language. So, looking at the language in terms of things being able to flash - and it's not up - the question then becomes the sign cannot be flashing, moving, rotating, oscillating, or of a similar type. And unlike the language with regard to changeable signs for municipal buildings, fire, or ambulance departments, unlike that language, which is exclusive, this says 'or of a similar type.' Right? So, the notion is this isn't a limited universe - this is a list of examples of signs that cannot be in that C-1 district under that additional basis.

It's important, too, as we're talking about comparisons, that this language says the sign cannot be flashing, moving, rotating, oscillating, or of a similar type, right. So, it cannot be that. If you compare that to one-fifty-five (155) 'N,' which would be a separate basis for denial, it sounds prohibited in all districts, it says 'signs that provide,' right? So, if we're to conclude, based on Mr. Bloch he's sitting in the hurricane and construction - if the legislative body uses a term in one place, and doesn't use it in another, we're supposed to construe that as intentional. Right? So, in one-fifty-five-forty-six (155-46) 'B,' it's talking about signs that are blinking, moving, animation, or, I'm sorry, signs that are let me quote the exact language again - 'signs that are blinking, moving, rotating, oscillating, or of a similar type,' so they are doing that. Right? That's different than signs that provide blinking. If you were to say that those are the same, you have effectively eliminated the word 'provide.' And we believe on a fair, on a fair reading of the word 'provide' is that they're capable of. Right? So, if you use Mr. Bloch's analogy of the Town providing soup for the homeless or shelter for the homeless, the Town is providing it. Whether someone uses it or not is up to them, I suppose. But the Town is providing it. Right? The Town hangs out the sign, and says, 'hey, come get soup. We are providing the soup.' Whether or not somebody uses it is irrelevant, the Town is providing it. We would say the same thing in terms of signs that provide blinking. So, if nobody shows up at the Town for soup, the Town still provided it; unfortunately, they didn't get any takers. Here, signs that provide blinking - well, the sign's capable of doing that. Right? The sign can provide it; he's choosing not to do it, but that's different than the sign providing that. And that's a separate second basis.

And then the final one, which dates back to the 'only changeable signs permitted for municipal buildings,' again, if you look at the history, it's adopted in 2009. At that point, it's the legislative intent, based on the plain meaning, would've been 'that's it. These are the only people that are allowed to have changeable signs.' I suppose we can have a discussion in terms of whether the Giant business signs are changeable - unlike a lot of the terms, there is a definition for 'changeable sign' in the zoning ordinance, and it includes the

electronic reader board sign. Our position would be that the Millville Town Center signs are not changeable within that definition of 'changeable sign' and so forth. And we would set forth that the Millville Town Center sign is a business sign in the C-2 district; just like we're debating the C-1 district signs, only, obviously, a different district. So, again, the Town has three (3) positions in terms of why the permit needed to be denied - any one (1) of which would suffice. We seem to be parsing a lot of words but that's the basics. The basics are: it doesn't meet any of the permitted signs; the one (1) permitted sign that discusses changeable signs is limited to municipal buildings, fire departments, police, and ambulance. By saying that, and by adopting that in 2009, the Town has said 'and other people cannot have these changeable signs.' And changeable signs is defined in the Code, and was defined by the 2009 ordinance. So, that's the one (1). The other is, again, it's not on this permitted list, it's not within item 'B' in terms of the additional ones within C-1, based on the flashing - and there was some discussion in terms of flashing. It sounds like Mr. Bloch agrees that the temperature and time is a flashing sign. Right? And, indeed, your Code seems to say that by saying 'well, flashing signs are prohibited but for these time and temperature signs.' And then there was a discussion in terms of the frequency of how often they change. But there isn't some threshold in terms of saying 'well, how many flashes does it need to flash before it becomes a flashing sign?' Right? So, if it flashes once, which might be once a week, it's a flashing sign. That would be the Town's position. And then, again, we come down to the flashing signs, animated signs, and then, particularly item 'N,' which differentiates from the others by using the word 'provides.' The Town's position is that implies capability. He might not be doing it, but it has that capability. Any questions from me? Otherwise, I'll call Mr. Evans to kind of put some evidence into the record to support the Town's position.

Mr. Lyons: No.

Mr. Ryer: No.

Ms. Faden: No.

Mr. Thompson: And, if it pleases the Board, and the acting Chair, if Mr. Evans could just stay where he is, and I'll just ask a few questions.

Mr. Lyons: Yeah.

Mr. Robertson: That's fine. If we could just swear in Mr. Evans. Mr. Evans, do you swear or affirm that the testimony you're about to provide to this Board is the truth, the whole truth and nothing but the truth?

Mr. Evans: I do.

Mr. Robertson: One question. Are we going to pick this up on the microphones if he stays there?

Mr. Amerling: Yes.

Mr. Robertson: O.K. I just want to make sure.

Mr. Thompson: Mr. Evans, what's your position with the Town?

Mr. Evans: The Town Code and Building Administrator.

Mr. Thompson: And how long have you been in that position?

Mr. Evans: Five plus (5+) years.

Mr. Thompson: Part of your duties - does that involve reviewing permit applications?

Mr. Evans: Correct, yes.

Mr. Thompson: Will that include sign permits?

Mr. Evans: Yes.

Mr. Thompson: And are permits generally required for posting or erecting or altering a sign?

Mr. Evans: Yes.

Mr. Thompson: The appellant here today - did he originally apply for a sign permit?

Mr. Evans: No.

Mr. Thompson: How did you become aware of his new sign?

Mr. Evans: I was informed that he had erected a electronic changeable sign, and I went down, investigated it, and found that he had. And that started the proceeding.

Mr. Thompson: What kind of sign was there before?

Mr. Evans: It was a - if we're gonna use the definitions - it was a detached sign, permanent, similar to the one that is above the electronic sign.

Mr. Thompson: So, it wasn't electric, it wasn't changeable?

Mr. Evans: No.

Mr. Thompson: Did you have any discussions with the appellant prior to him placing the new sign?

Mr. Evans: No.

Mr. Thompson: And we've had some discussion, but, just to put it in the record, chapter one-fifty-five (155), is that your zoning ordinance in its codified form?

Mr. Evans: Correct.

Mr. Thompson: And is article nine (9) the article governing sign regulations?

Mr. Evans: Correct.

Mr. Thompson: There was some discussion in terms of rejecting an application for electronic changeable signs. Has the Town actually received any applications for electronic changeable signs?

Mr. Evans: Not that I'm aware of, no.

Mr. Thompson: Outside of this, obviously. The Millville Mini Storage - is that within Town limits or out of Town limits?

Mr. Evans: I believe that one's outside of the Town limits.

Mr. Thompson: The Giant - is that in the C-2 district?

Mr. Evans: It is.

Mr. Thompson: And, do you have the Code in front of you?

Mr. Evans: I do.

Mr. Thompson: What's the basis for the Giant's sign that was shown to the Board previously? What in the Code provides for that type sign?

Mr. Evans: One-fifty-five-forty-six (155-46) 'C,' item two (2): 'Each shopping center may be permitted one detached interior lighted but nonmoving sign, naming the center and listing the businesses within the shopping center, along each arterial or collector road which the tract in question abuts.'

Mr. Thompson: So, this brings us to - this is kind of a good example of the overall organization of the article. When you receive an application, do you look for a basis for the sign to be permitted?

Mr. Evans: Correct.

Mr. Thompson: O.K. If we heard some discussion in terms of a non-prohibited sign is then permitted, is that your position?

Mr. Evans: Say what?

Mr. Thompson: So, in other words, sorry, does a sign have to be - does a sign need to be permitted somewhere within the Code?

Mr. Evans: Correct.

Mr. Thompson: O.K. It's not just simply that anything not prohibited is, by implication, permitted?

Mr. Evans: Correct.

Mr. Thompson: Did you determine this to be a changeable sign under the definition in one-fifty-five-forty (155-40)?

Mr. Evans: I did.

Mr. Thompson: And, did - do you know the use of the property?

Mr. Evans: It's a performing arts theater.

Mr. Thompson: So, it's not being used as a municipal building, fire, police, ambulance department?

Mr. Evans: No, it is not.

Mr. Thompson: Have you granted any applications for a changeable sign for any use other than a municipal building, police, fire, ambulance department?

Mr. Evans: Not that I'm aware of. And I take that back. Yeah. Mr. Bloch's sign actually was permitted. His changeable sign that's on the wall board is a permitted changeable sign. I permitted that.

Mr. Thompson: Did it have - did the application have the chaser lights?

Mr. Evans: No, it did not.

Mr. Thompson: So, based on your reading of the Code now, is that probably a non-conforming sign?

Mr. Evans: Actually, it was not in according of the permit so that would actually be an illegal sign.

Mr. Thompson: So, in other words, it's not non-conforming in the sense that a pre-existing non-conforming - it's illegal under the Code?

Mr. Evans: Correct.

Mr. Thompson: O.K. But that's obviously not the sign we're here about tonight?

Mr. Evans: No.

Mr. Thompson: O.K. So, the sign, you agree with Mr. Bloch, that it's not a permanent subdivision sign, temporary real estate sign, temporary construction sign, temporary yard sale sign, instructional sign, or political sign?

Mr. Evans: No.

Mr. Thompson: O.K. Turning your attention to one-fifty-five-forty-four (155-44) 'B-2,' the sign here, is that a detached sign?

Mr. Evans: It is a detached sign, yes.

Mr. Thompson: And is that as opposed to a wall projecting sign?

Mr. Evans: Correct.

Mr. Thompson: O.K. There is language in 'B-2' that discusses displaying the name of the store or use. Does Mr. Bloch's sign display the name of the store or use? And I should point to the lower portion of the sign.

Mr. Evans: The lower portion does not.

Mr. Thompson: In terms of the sign, is there also a problem in that the sign - well, the Code says 'no sign shall be flashing, moving, rotating, oscillating, or of similar type' - did you determine this to be within one of those categories?

Mr. Evans: Correct.

Mr. Thompson: Which category?

Mr. Evans: Well, in the similar type as, I think, well, flash sign. It will flash when the wording is changed. And, therefore, it also moves when the wording is changed. It's all computer-generated. It will turn off and turn on, therefore, it flashes and the letters move.

Mr. Thompson: And, in terms of flashing signs - so now we're gonna move to one-fifty-five-forty-three (155-43) - would you also consider this to be an actual flashing sign?

Mr. Evans: I would say yes.

Mr. Thompson: And, when does it flash?

Mr. Evans: Whenever the wordage changes. Same way as if the temperature.

Mr. Thompson: Does the Code involve any sort of threshold for the number of flashes before a sign is considered 'flashing'?

Mr. Evans: No.

Mr. Thompson: Did you consider the sign to be an animated sign?

Mr. Evans: I consider the sign capable of providing the animation if they so choose.

Mr. Thompson: So, does that, then, bring us to paragraph 'N'? Could you just describe to the Board when you read signs that provide blinking, moving, animation, revolving, chaser lights, or moving spotlights, how do you interpret - how did you interpret the word 'provide' in the sentence?

Mr. Evans: Was it capable of doing that?

Mr. Thompson: And, just to clean up some of the discussions that we had previously, the First State Federal sign - I'm sorry, you've said you've been with the Town five (5) years, over five (5) years?

Mr. Evans: Five plus (5+) years.

Mr. Thompson: Alright. Does the First State Federal sign pre-date you?

Mr. Evans: Very much so.

Mr. Thompson: Do you know the history of the Town sign ordinance and zoning ordinance?

Mr. Evans: Um, no, not the full history of it.

Mr. Thompson: Alright. The Giant sign - was that—?

Mr. Evans: Pre-dates me.

Mr. Thompson: O.K. And I think you said the Millville Mini Storage was out of, out of the Town?

Mr. Evans: I believe that's out of Town.

Mr. Thompson: So, are there any signs that you've had to interpret, or that you've come to a different interpretation of these provisions to the Code?

Mr. Evans: Layman's terms here. Did I deny sign permits?

Mr. Thompson: Right. Have you had to deny a sign permit based on any of these provisions that we've discussed?

Mr. Evans: This is the only one under these provisions. However, I have denied sign permits.

Mr. Thompson: O.K. Thank you. Nothing further.

Mr. Robertson: Are there any questions from the Board?

Mr. Lyons: Not from me.

Mr. Ryer and Ms. Faden shook their heads no.

Mr. Robertson: Is there any questions from Mr. Bloch?

Mr. Bloch: Yeah. A couple, if I may. Eric, I won't - I guess we can have a conversation about the lights on that sign at some other point?

Mr. Evans: O.K.

Mr. Robertson: Yeah, I would agree that it's not germane to proceed with— (inaudible)

Mr. Bloch: And, similarly, I'm not ready to do battle over whether that Millville Mini Storage thing is in or out. I actually think one part of it is in and - one part of their facility is in, one is out. But, I could just as easily refer us to—

Mr. Robertson: Flip that. Because I'm not sure that I've seen that picture - oh, O.K., that's that one—

Mr. Bloch: And, so we don't have to worry about whether it's over the line or not, I'd like to use this one (holds up picture of First Shore Federal Bank sign). We agree that this one is—?

Mr. Evans: Absolutely.

Mr. Bloch: And, is that a changeable sign?

Mr. Evans: Absolutely.

Mr. Bloch: O.K. Do that by hand?

Mr. Evans: Correct.

Mr. Bloch: When you change it, is that what you would describe as a moving letter? Let me back off for a second. Is that - would that sign be prohibited if those letters were moving?

Mr. Evans: Under the current Code right now, that sign is prohibited -- period.

Mr. Bloch: Well, that's interesting. Why?

Mr. Evans: It pre-dates it. 'Cause the Code says that the only people that are allowed to have changeable signs is a municipality, fire, police, ambulance.

Mr. Bloch: Oh, O.K.

Mr. Evans: So, under current Code, that sign is non-conforming. It's prohibited. I would not issue a permit for that right now.

Mr. Bloch: But let me talk for a moment about not all the suddenly illegal signs, but, my question is, let's assume for the moment that it's a legitimate Town sign which you've described as changeable.

Mr. Evans: Correct.

Mr. Bloch: O.K. Could you tell us what the definition of changeable sign is?

Mr. Evans: 'A *sign* with the capability of content change by means of manual or remote input, including signs which are—'

Mr. Bloch: O.K.

Mr. Evans: And I would follow *that* one under 'Manually activated. Changeable sign whose message copy or content can be changed manually.'

Mr. Bloch: O.K. So, that is a sign that is, we thought, legitimate so long as - and it's devoted to changing content?

Mr. Evans: Correct.

Mr. Bloch: That's why it's called a changeable. When - I take it, if we put up that sign or if - these people, I guess they're grandfathered, right?

Mr. Evans: Non-conforming. I don't use 'grandfathered.'

Mr. Bloch: O.K. Fair enough. If they put - if they made those - if they put them on spinners or something, and those were moving - they put pinwheels on it - would that be O.K.?

Mr. Evans: I think that would fall under 'moving, animation, revolving, chasing lights, or moving spotlights,' which are not permitted in any district.

Mr. Bloch: Fair enough. And, by the way, how are they - is that - strike that. When the letters are taken down and put up, is that moving?

Mr. Evans: The letters are moving, yes, manually.

Mr. Bloch: And is that forbidden?

Mr. Evans: It is according to the current Code.

Mr. Bloch: So, they can't change that sign?

Ms. Bloch: But they're grandfathered.

Mr. Evans: They're non-conforming. That sign would not - that permit would not be issued for that sign today.

Mr. Bloch: O.K. So, I take it-

Mr. Evans: —under the current Code.

Mr. Bloch: I take it that you agree with the Town when they say that once at the end of the week, when that sign goes out and a new title goes in, that is what you're basing your case on, saying that it's flashing or moving or something?

Mr. Evans: Yeah. It's a changeable sign.

Mr. Bloch: O.K. Well, we know it's a changeable. We agree with that. What I'm trying to zero in on is whether that moment - when the sign goes out with the one title and comes on with the next - is that what you're saying the violation is?

Mr. Evans: That's one of the violations. It is a flashing sign at that time.

Mr. Bloch: O.K. Give me just a moment, please. The sign up on top - Dickens Parlour Theatre sign - we turn that off during the day to save electricity, we turn it on at night. Are we in violation when that happens?

Mr. Evans: Currently, you're in violation because a permit hasn't been issued for it, so I don't know if it's internally illuminated or externally illuminated.

Mr. Bloch: O.K. Well, I will—

Mr. Evans: And, if you're turning the light off during the day, I don't think the light would matter at that time anyhow. If you turn the light on, it's allowed to be internally illuminated or externally illuminated, according to Code.

Mr. Bloch: Clearly, it can be illuminated from either side and this is internally illuminated. But my question is: when we turn it on, is it flashing?

Mr. Evans: Internally illuminated is permitted.

Mr. Bloch: We've established that. But my specific question is: if it is turned on and off fourteen (14) times a week as is a lot of signs in this Town, is that 'flashing'?

Mr. Evans: By definition, I guess it would be.

Mr. Bloch: And, so, any sign that is turned on and turned off is not compliant with this Code? Is that correct?

Mr. Evans: The Code allows for the internal or external illumination.

Mr. Bloch: We've established that.

Mr. Evans: Right. So, I take it on the basis of the Code that says you're allowed to light your sign. And, yes, I understand in interpreting the Code that you're gonna turn it on and turn it off. I understand that. That, I took it as, just reading it as the Code.

Mr. Bloch: So, that's not flashing?

Mr. Evans: I would not classify that as against the Code.

Mr. Bloch: Well, that's what I meant.

Mr. Evans: I would not classify that as against the Code because you're allowed to light your sign.

Mr. Bloch: That's allowed and it is *not* prohibited as flashing or oscillating or blinking or anything.

Mr. Evans: Correct.

Mr. Bloch: That's perfectly legitimate, is it not?

Mr. Evans: Yes. The letters do not change on them.

Mr. Bloch: O.K. So, that, when our sign goes off, to replace it with the new message, could you tell us what the difference is?

Mr. Evans: It's a changeable reader board sign.

Mr. Bloch: Would you stipulate the word 'reader board' never appears?

Mr. Evans: O.K. So, ya know what, it's a changeable sign according to the definition.

Mr. Bloch: We agree. We agree that it is fully. It's a changeable sign. Changeable signs are defined as being capable of content change. Yes?

Mr. Evans: Yes.

Mr. Bloch: So, let me just ask you once more and then I'll leave it alone - to tell us the difference between our sign going off - at the end of the week or two or whatever it is - and on with the new name, and the signs that go off and on every day - as I understand it, those are fine, ours is not, and I'm just asking whether you can tell us what the difference is.

Mr. Evans: Your Dickens Parlour Theatre sign content does not change, it is internally illuminated. Your 'Complicity' sign is a changeable sign—

Mr. Bloch: It is.

Mr. Evans: —and can be changed on a regular basis. And will be, as you said, weekly, biweekly, every three (3) weeks - could be one (1) play this day and one (1) play tomorrow—

Mr. Bloch: Could be, yeah.

Mr. Evans: —So, it's a changeable sign, and that is the difference. One (1) is a permanent and one (1) is not. So, you have a changeable sign.

Mr. Bloch: O.K. So, the reason that's forbidden is it's changeable and we come back to your conclusion that changeable signs can't be used by anybody in the city - except the city?

Mr. Evans: According to the Town Code.

Mr. Bloch: O.K. I don't think I have anything else. Let me just - oh, oh yeah. Not sure I understood that 'Complicity' - the use of the title of the play puts it in violation. If this were a plain board, not electric, manual, as defined - and the top said 'Dickens Seafood Store,' and below, it said 'fresh lobster today' - would that be in violation of the Code?

Mr. Evans: Is the top permanent?

Mr. Bloch: Yeah.

Mr. Evans: And it says Dickens—?

Mr. Bloch: 'Dickens Seafood Store.'

Mr. Evans: And the bottom one is a changeable sign?

Mr. Bloch: Yeah. It has the letter—

Mr. Evans: So, yes, it would be in violation of the Code according to the Town today.

Mr. Bloch: O.K.

Mr. Evans: Because the bottom would be changeable in aspects of one-forty-four (144).

Mr. Bloch: Well, I guess - make sure we're on the same page - the bottom, I'm hypothesizing is just a plain plank of wood - it's not electric, and the letters don't change - maybe they change the sign, the whole sign every day, I - use any construct you wish. I'm simply asking about the content. The content on the lower sign - I'm hypothesizing - says 'fresh lobster every day' - does that violate the Code as well?

Mr. Evans: At this time I would have to say draw it up, show me a site plan, put it on paper, and let me review the Town Code 'cause you're getting into the weeds that I have to review.

Mr. Bloch: O.K. You've been most responsive. Thanks a lot, Eric.

Mr. Thompson: I just had two (2) quick points of clarification.

Mr. Robertson: Sure.

Mr. Thompson: Mr. Evans, when you say 'non-conforming,' do you mean a pre-existing, non-conforming sign that a lot of people kind of in layman's terms refer to as 'grandfathered'?

Mr. Evans: Yes.

Mr. Thompson: O.K. So, you're saying 'non-conforming' versus illegal? 'Non-conforming' meaning—

Mr. Evans: It was permitted when it was permitted.

Mr. Thompson: And then, in terms of the illumination issue, as I understood your explanation, it's that the Code handles illumination separately, as a feature of a sign?

Mr. Evans: It does.

Mr. Thompson: O.K. So, therefore, that feature of the sign is permitted by virtue of the Code providing for, allowing for illumination?

Mr. Evans: Correct.

Mr. Thompson: O.K. Thank you.

Mr. Bloch: May I ask just one more question, Mr. Chairman?

Mr. Robertson: Yes. You get an opportunity for a rebuttal anyway, so—

Mr. Bloch: The definitions of changeable sign specifically, currently anticipate manually activated changeable signs. Is that in - I guess my question is: would you tell us what this means? Would you give us an example of a sign that would be legal in this municipality today?

Mr. Evans: No. It's not legal in this municipality today, except for the municipality buildings, fire, police, ambulance.

Mr. Bloch: O.K.

Mr. Evans: Changeable signs are not permitted except for.

Mr. Bloch: So, and when was this - this was changed in 2012, was it not?

Mr. Evans: It think that was - 2009, that was put in?

Ms. Botchie: Yes. Here's the original ordinance.

Mr. Evans: Yup. May 2009.

Mr. Thompson: I'm providing a copy to Mr. Bloch of the sign ordinance.

Mr. Bloch: Thank you very much. Last question. Do you have any idea why - I'm sorry, was this not amended in 2012? I may have - could you take a look at - I may be wrong. I'm looking at changeable sign definition - it says added - the definition was added in 2012, was it not?

Mr. Evans: Eight-fourteen-twenty-twelve (8/14/2012).

Mr. Bloch: I also noticed that in forty-three (43), signs prohibited in all districts - there are amendments to that - eight-fourteen-two-thousand-twelve (8/14/2012), as well. Right?

Mr. Evans: Correct.

Mr. Bloch: Part 'B,' part 'F'?

Mr. Evans: Correct.

Mr. Bloch: Do you have any idea why it just didn't, at that time, say 'ya know, Eric's right. Changeable signs are prohibited - period'? Do you have any idea why they didn't just say that?

Mr. Evans: You would have to ask Town Council.

Mr. Bloch: O.K. That's not there, is it? It doesn't say that changeable signs are prohibited in all districts, in that section dealing with signs that are prohibited in all districts, does it?

Mr. Evans: No, it does not.

Mr. Bloch: Thanks, Eric.

Mr. Robertson: And, as I said, you do have an opportunity, Mr. Bloch, for a rebuttal. It sounds like, perhaps, you just did that. But, again, if you have anything you would like to present in addition—

Mr. Bloch: Thank you, Mr. Chairman. Again, everyone's been very patient and attentive. I think I have very little - if anything, I will have a rebuttal, but I would appreciate if we could just take a ten (10) minute break and have me take a look.

Mr. Robertson: Is that for rebuttal or for your closing argument?

Mr. Bloch: Well, ya know, I'm a little - I'm not sure I follow the rules—

Mr. Robertson: Well, because the way the rules are, there's an opportunity for the appellant/applicant is given a brief opportunity to submit additional testimony or evidence in the form of 'rebuttal.' So, that's what's next on the line of what we're doing, and then, after that, there's an opportunity for closing arguments from both sides.

Mr. Bloch: Alright. I think the likelihood is I will have little or no rebuttal. And I'll be prepared to go into closing argument very quickly - even if I have something on rebuttal, but I don't think I will have—

Mr. Robertson: O.K.

Mr. Thompson: Mr. Chair, there's also - I don't know that there's anybody here - but there's also the statements from the public as well.

Mr. Robertson: Thank you, Mr. Thompson. We kind of got into an opportunity for a back and forth, and so, I certainly don't want to forget the public. So, is there anyone here this evening who would like to speak with regard to the Town's argument concerning this appeal? Apparently, there is none. Thank you for reminding me of that, Mr. Thompson.

Mr. Bloch: If that's a vote, do we win?

Mr. Robertson: No, that's not a popular vote.

Mr. Bloch: Just curious.

Mr. Robertson: O.K. Do you need a brief recess?

Mr. Bloch: Just a couple minutes, please. (The hearing went into recess at 9:11 p.m.)

Mr. Robertson: Alright. If we could start back up (The hearing reconvened at 9:17 p.m.). Mr. Bloch—

Mr. Bloch: I have no rebuttal.

Mr. Robertson: O.K. So, let's go ahead and start with closing arguments. Let's make sure I got this correct in the rules. As I believe it states, the applicant/appellant has the opportunity, so we'll start with you, Mr. Bloch.

Mr. Bloch: Personally, I do want to thank all of you for your patience and your endurance. This is not an easy job walking through these things. I recognize that. And it will not be much easier in your deliberations, but I want to give you just a couple of things for you to keep in mind. And that is: Mr. Thompson has told us in his opinion - his legal opinion - he quotes the Delaware Supreme Court, 'it is well established principle of statutory interpretation that the law favors rational and sensible construction. When construing a statute, literal or perceived interpretations which yield mischievous or absurd results are to be avoided.'

I think we've seen some abundant examples of an absurd result - none more apparent than saying that this sign, which changes once the end of every play, is flashing. The only thing I can do is appeal to your common sense and in necessity of avoiding an absurd result. I think we all know what flashing light is - that's not it. Throughout the Town's presentation, they have strained mightily to tell us, for example, that the content of the sign makes it illegal, that addressing the play and its dates doesn't tell what the use of the theater is for. We would argue that that's nonsense, that's an absurd result. The top says Dickens Parlour Theatre, the bottom says what it's being used for. When it's used for magic, you could have a magician; if it's a charity, you put the name of the charity. Those are our intentions.

In any event, as you go through looking at the record here, I would urge you to read what the Town says about these ordinances. They don't use the words that are *in* the ordinance. They substitute the words such as 'only,' and drop the words 'in all districts,' because it doesn't fit the conclusion that, well, changeable signs just can't be used by the Town. Reality is that they can be used so long as they are not breaking the rules that we all agree should exist.

I guess, in final summation of all of this, we're all here after the same thing. We want to avoid the type of mischief that is imposed by signs that are animated. We differ mightily on whether you can reasonably, with a straight face and the

use of the English language, tell us that that is an animated sign. And I don't really care what standard you use - basically, common sense is going to guide you. So, we thank you very much for taking this very important question under consideration. We look forward to hearing from you. And I thank my opposing colleagues here for their presentations as well. Thank you.

Mr. Robertson: Thank you, Mr. Bloch.

Mr. Thompson: I want to join in thanking the Board, and Mr. Robertson, for being here tonight, and thank you for your patience and consideration. In terms of one of the issues that I brought forward as a basis for why I think Mr. Evans' denial of the sign permit was appropriate, was the language that the changeable sign is limited to municipal buildings, police, fire, and ambulance departments. And, Mr. Bloch is absolutely correct. It does not say the word 'only' in there. But a common statutory canon of construction is that the expression of one thing is the exclusion of all others. There isn't any language in there that says 'this is just an example,' 'other such things' - that's the universe. So, since 2009, the implication is no one else can have changeable signs. And the Board hasn't heard an explanation as to why that isn't true for what everybody agrees is a changeable sign. So, that's one (1) basis.

There are, obviously, other arguments that the Town's put forward. Since it's not a changeable sign for municipal building, police, fire, and ambulance departments, it's not a sign permitted in all districts. I think I still have trouble understanding the implications of the Town's avoiding the language 'permitted in all districts' - I think we're reading that immunity exactly what it should be which is those are the signs that can appear in any district whatsoever. But we all agree that it's not that, so, then, the next basis is, we need to look and see if it's permitted in the C-1 language. And the Town's position is: it is not indicating the use. The use would be 'a theater,' so - and it's not the name of the business, obviously; it's a specific event there, but, of course, that brings us back to this whole notion of it being a changeable sign. Right? So, it's kind of like the letter, or the manual changeable sign where somebody puts up the specials. But, the important thing there is that the ones we've looked at all predate that ordinance in 2009. So, you've heard Mr. Evans say if they came to the Town now and asked for a changeable sign - whether it's the manual lettering or it's an electronic one - he's going to view that as a changeable sign and deny that permit. So, it's not permitted in one-fifty-five-forty-four (155-44), and it's not permitted in the additional bases of permitting a sign in C-1. And, again, we take the position that you need to have a stated basis within the Code for the sign to be permitted. It's not just that 'it's not on the list of prohibited' - it has to fit within a category of permitted signs. We don't think it does - that's the second basis.

The third basis is: it's on the list of prohibited signs. So, again, it's a sign - signs that provides blinking, moving, animation, revolving, chaser lights, or moving spotlights. So, we interpret that to mean that it's capable of it. The word 'provide' is different than what we see in the C-1, where it says 'flashing sign.'

This is - it provides that. The sign is capable of providing that. So, we think, again, three (3) items: it's a changeable sign, everyone agrees it's a changeable sign - that should be read - just the plain reading of it is - changeable signs are only allowed for those types. The second basis: it's not within the list of permitted signs. The third basis: it's on the list of prohibited signs. So, again, thank you for your time.

Mr. Robertson: Thank you.

Mr. Bloch: Mr. Chairman, I know this is a little unusual, but may I just ask a question, because it has to do with where we go from here. May I? It'll be very brief.

Mr. Robertson: Sure.

Mr. Bloch: I would ask any of you guys - I just want to make sure I understand the Town's position. What I think I hear you to be saying is that under no circumstances can we, for example - it doesn't matter how we do it - if we get a solid piece of wood, and inscribe the name of the next play in it - we can't tell people the name of the play that's inside - we cannot advertise because, someday, we may unbolt that - well, we will - and put another one on? Do I understand that to be correct?

Mr. Thompson: And I don't want to get into the notion of an advisory thing here—

Mr. Robertson: Yeah. That's not what's on appeal.

Mr. Thompson: —the application - I think it'll be more confusing, but the bottom line is that's not the application tonight. So, my suggestion would be to consult with the Town before you fix up the sign.

Mr. Robertson: Yeah, because I'll just say that, in that case, I think we're getting into hypotheticals - what if we did this, or what if we did that? - when we're talking about an appeal from the Town official's decision on this particular sign.

Mr. Bloch: My only point, Mr. Robertson, was that we understand, from the Town's position, that they don't want us to be doing it electronically. We also understand, from the Town's position, that they don't want us to be doing it with changeable letters, including the sign that we do have a permit for, to use changeable letters. I just - I guess I'm just asking what's left?

Mr. Robertson: Well, and I would say - because I do hear what you're saying - and I question that argument on whether or not it advertises the use because I think they have a really strict interpretation of that, that I don't know that I honestly agree with, perhaps. But, I also don't know that really is within the scope of what we're considering here tonight.

Mr. Bloch: I agree with you.

Mr. Robertson: That question kind of was there, and I don't know that that was actually—

Mr. Bloch: The only reason I'm asking is because I think it does reflect on their position in this case, but I also agree it's something we can very quickly ask in the hall.

Mr. Robertson: Thank you. Well, that, at this point, closes the public hearing on the appeal that we started two-and-a-half (2 ½) hours ago. So, here's where the Board is right now under the rules. What the Board has is sixty (60) days from the conclusion of the hearing today to issue a written decision setting forth the reasons for its decision. And there's requirements for filing and copying in the Town office, and notifying all of the parties involved. What I will state is that it also says the Board shall not be required to decide any proceeding immediately following the closing of the hearing, but may table action on same in order to consult with legal counsel, review the minutes, or take the matter under consideration. And then, at some point, there needs to be a discussion, so I'll tell you, there are some options here. There's certainly been a lot of information presented in the hours, it's getting late, and it's not - this is not a simple matter. There's been a lot of good legal arguments made by both sides, and certainly, you have to apply those arguments to the Code so you can make a decision. If you're inclined to sort of mull it over and digest what's been said, I just wouldn't mind it if it were under the sixty (60) day time limit. So, we would have to reconvene at some point within that sixty (60) days to have a meeting and vote. It would still leave us enough time to—

Mr. Lyons: Do we have to advertise the meeting and do all that?

Mr. Robertson: Yeah, that's a public meeting and everything would have to be—

Ms. Faden: You mentioned about consulting with counsel. Is that in a public forum?

Mr. Robertson: Well, and it depends on if you're gonna ask me questions on the Board. Yes, that should be in a public forum. So, yeah.

Mr. Lyons: If we just want to get together and vote, that is public information?

Mr. Robertson: Yes. And it would be re-noticed as well.

Ms. Lyons: Can we get together and discuss without it being a public forum?

Mr. Robertson: No. The three (3) of you can't have a private — that comes down to Delaware's Freedom of Information Act rules, so, yeah, you should—

Ms. Bloch: We can be there?

Mr. Robertson: Pardon me.

Ms. Bloch: We can be there?

Mr. Robertson: Well, absolutely. I mean, the discussions are going to be a public meeting just like this. It'll be noticed and advertised and everything else. Under Delaware Freedom of Information Act, so we're kind of—

Mr. Lyons: So, we have a - so, if we adjourn now or table it now, we have - what's the average advertising requirement. We couldn't meet for at least two (2) weeks? Because we have to advertise?

Mr. Robertson: Yeah, I mean, there's the seven (7) days.

Mr. Lyons: Oh, O.K.

Mr. Robertson: Yeah, and the holiday's coming so—

Mr. Lyons: And that's what I'm saying, so with the holidays coming, we have sixty (60) days, we can do it in January.

Mr. Robertson: But the bigger question is when we have small towns is: is everybody in town? Nobody's going to Florida for the winter, right?

Mr. Lyons: No. We're here.

Mr. Robertson: Certainly you can discuss it this evening, that's one of the options that you have.

Mr. Lyons: I'm just asking the other members of the Board how they feel about discussing the probing on this tonight or, as our counsel said, ya know, there's an awful lot to digest and we should digest that for a little while and reconvene.

Mr. Ryer: Yeah, alright.

Ms. Faden: That's fine. Do we need a motion for that?

Mr. Robertson: Yeah, I think what you do is just - you need a motion at this point to defer on the action and to reconvene for further deliberations and possible vote.

5. ADJOURNMENT:

Ms. Faden motioned to adjourn the meeting and reconvene at a later date to make a decision. Mr. Ryer seconded the motion.

Ms. Faden: I motion to adjourn the meeting at 9:31 p.m.

Mr. Ryer: I second it.

All present voted in favor. The motion carried unanimously 3-0. Meeting adjourned 9:31 p.m.

Respectfully submitted, Matt Amerling